Mr Previte asked for aggravated damages. In view of my finding of express malice, the plaintiff is entitled to such damages. The other aggravating factor is the conduct of the defendants through their counsel in repeatedly attempting in the cross-examination to put to the plaintiff matters which have no relevance to the issues; their counsel have persisted in that line of cross-examination on several occasions. The line of cross-examination, Mr Previte submitted, exacerbated the hurt to the plaintiff's feelings and the damage to his reputation, particularly in this case which has received extensive publicity. Mr Previte listed out no less than 24 instances of the cross-examination in which questions were disallowed on the ground of irrelevancy. In addition, there were numerous instances where questions put to the plaintiff were calculated to be offensive and to increase the hurt to his feelings. In my judgment, such conduct is a relevant aggravating factor.

There is one other aggravating factor which, but for the fourth defendants, I would have to take into account, and that is the publication of the press release by the third defendants on 23 September 1989 to which I have adverted. The fourth defendants had played no part in the publication. As I have to award a single global sum for the libels against all the defendants as joint tortfeasors, a sum which any of the defendants can be held liable, this event of publication has to be disregarded as an aggravating factor. As an authority for this I need to quote only the following passage from the speech of Lord Hailsham of St Marylebone LC in *Cassell & Co Ltd* v *Broome*[23] at p 1063:

> I think the effect of the law is exactly the opposite and the awards of punitive damages in respect of joint publications should reflect only the lowest figure for which any of them can be held liable. This seems to me to flow inexorably both from the principle that only one sum may be awarded in a single proceeding for a joint tort ... I think that the inescapable conclusion to be drawn from these authorities is that only one sum can be awarded by way of exemplary damages where the plaintiff elects to sue more than one defendant in the same action in respect of the same publication, and that this *sum must represent the highest common factor, that is, the lowest sum for which any of the defendants can be held liable on this score*. Although we were concerned with exemplary damages, I would think that *the same principle applies generally and in particular to aggravated damages*, and that dicta or apparent dicta to the contrary can be disregarded ...
>
> Plaintiffs who wish to differentiate between the defendants can do so in various ways, for example, by electing to sue the more guilty only, by commencing separate proceedings against each and then consolidating, or, in the case of a book or newspaper article, by suing separately in the same proceedings for the publication of the manuscript to the publisher by the author. (Emphasis added.)

I have been referred to the following cases: *JB Jeyaretnam* v *Lee Kuan Yew*[24] and *Lee Kuan Yew* v *Seow Khee Leng*[25] where substantial amounts of damages were awarded to the plaintiff. Of course, in each of those cases, the defamatory statements were entirely different from those before me; hence at most they serve merely as illustrations of the amounts awarded.

Having taken into account all the relevant matters, including the aggravating factors, I think that a fair and reasonable sum as damages for the plaintiff is $230,000. There will therefore be judgment for the plaintiff in that sum together with interest at the rate of 6% pa from 31 December 1987 to the date hereof. I also grant an injunction against repetition of the libels as claimed. On the question of costs, the plaintiff has succeeded substantially on all the issues and is therefore entitled to full costs of this action, and I so order.

Order accordingly.

Solicitors: *Lee & Lee; Murphy & Dunbar.*

Reported by *Terence Tan Bian Chye*

Chong Peng Han & Ors v Chong Toh Jin & Ors

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 258 OF 1987
CHUA J
31 JULY 1989

Succession — Will — Construction of — Application to court to interpret will — Time period for contingency to occur to give effect to the gift over

The plaintiffs are grandsons of the testator, and by the present originating summons, sought directions of the court as to the construction of their grandfather's will. The first and second defendants are the executors of the will. The clause in the will which was sought to be construed was cl 6:

'I give... my freehold land and house... unto my trustee upon trust that is to say:

(a) That Chong Che Cheng & Co Ltd shall subject to the provisions hereinafter... be entitled to occupy the first floor of the trust premises during the lifetime of my youngest grandchild. After my youngest grandson becomes 21 years, if Chong Che Cheng & Co Ltd shall continue the first floor and the joint tenants agree to let, then Chong Che Cheng & Co Ltd shall pay an agreed monthly sum to the joint tenants...

(b) My wife... shall during her lifetime be entitled to reside ... on the ground floor of the said trust premises.

(c) Within 12 months from my date of death, to convey back... the said trust premises unto my grandsons Leong, Tiong and Choon who shall thereafter become joint tenants of the trust premises. If Leong shall predecease the others, my grandsons Han, Kiat and Hong shall be joint tenants of the trust premises.'

Chong Che Cheng & Co Ltd was wound up. Later, the testator's wife died. The youngest grandson at the death of the testator was

Choon, the fourth defendant, who has since attained the age of 21. The plaintiffs' contention was that cl 6(c) gave to the third and fourth defendants, ie Leong and Choon, and to Tiong, a contingent interest in the trust premises which terminates on Leong predeceasing Choon and Tiong, and that the plaintiffs take a remainder in the trust premises subject to the interests of Leong, Choon and Tiong. The defendants' contention was that the testator had devised the trust premises to Leong, Choon and Tiong as joint tenants.

Held, construing the will in the defendants' favour:

(1) The object of the court in construing a will is to ascertain the intention of the testator as expressed in his will when it is read as a whole in the light of the surrounding circumstance in which it was made.

(2) The express direction to vest the trust premises in Leong, Choon and Tiong gave them a vested interest in the trust premises. The interest that they took was an interest in the remainder as it was then subject to the prior enjoyment by the Chong Che Cheng & Co Ltd and the testator's wife.

(3) When the respective interests given to the said company and the testator's wife came to an end, the vested interests of Leong, Choon and Tiong gave them the right to immediate possession and enjoyment of the trust premises as joint tenants.

(4) In the event of Leong predeceasing 'the others', the interest in the trust premises is to be given over to the plaintiff. But no time limit has been stated for the happening of this contingency. The testator expressly directed his trustees: 'within 12 months from my date of death to convey... the said trust premises to my grandsons...'. This clearly indicates that the testator intended to restrict the period within which the contingency of the death of Leong is to occur to within 12 months of his death.

(5) The intention of the testator can be gathered from the Chinese document which he executed on the same day as the said will. The intention of the testator was to benefit Leong, Choon and Tiong. They were given the unconditional right to sell the trust premises and share the proceeds. As long as the trust premises is not sold, Leong and the plaintiffs have the right to live in it. It is clear that the testator did not intend that the plaintiffs should have the trust premises.

(6) Since Leong survived the period of 12 months after the testator's death, the contingency upon which the gift over to the plaintiffs is to take effect can no longer operate. Leong, Choon and Tiong are now the absolute owners of the trust premises.

G Raman for the plaintiffs.
D Chelliah for the first, third and fourth defendants.
Han Kee Fong for the second defendant.

Cur Adv Vult

Chua J: The plaintiffs, grandsons of Chong Che Cheng deceased ('the testator'), by this originating summons seek directions of the court as to the construction of their grandfather's will.

The testator made a will dated 17 September 1966. He died on 21 December 1966. The executors appointed were Chong Toh Jin, the first defendant, and Teo Keck Seng. Teo Keck Seng renounced probate and the second defendant, Chong Peng Hua, was appointed the executrix by the court on 11 March 1968.

The clause in the will which falls to be construed is cl 6 which reads as follows:

> I give and devise all that my freehold land and house known as No 2 Gray Lane, Singapore and comprised as lot 80[54] (hereinafter referred to as 'the trust premises') unto my trustees upon trust that is to say:
>
> (a) That Chong Che Cheng & Co Ltd shall subject to the provisions of hereinafter appearing be entitled to occupy the first floor of the trust premises during the lifetime of my youngest grandchild. After my youngest grandson becomes 21 years, if Chong Che Cheng & Co Ltd shall continue to occupy the first floor and the joint tenants agree to let, then Chong Che Cheng & Co Ltd shall pay an agreed monthly sum to the joint tenants being rent of the first floor.
>
> (b) My wife, Yap Poh Lai shall during her lifetime be entitled to reside and live on the ground floor of the said trust premises free of rent and other charges.
>
> (c) Within 12 months from my date of death, to convey back transfer or vest the said trust premises unto my grandsons Chong Peng Leong, Chong Peng Tiong and Chong Peng Choon who shall thereafter become joint tenants of the trust premises. If Chong Peng Leong shall predecease the others, my grandsons Chong Peng Han, Chong Peng Kiat and Chong Peng Hong shall be joint tenants of the trust premises.
>
> (d) The property tax, assessment of rates and other outgoings payable in respect of the trust premises shall be borne and paid by the said Chong Che Cheng & Co Ltd so long as they continue to occupy the first floor of the trust premises as herein provided.

Chong Che Cheng & Co Ltd was wound up by an order of court dated 28 November 1969. The testator's wife, Yap Poh Lai, died on 13 October 1986. The youngest grandson of the testator at the time of the death of the testator was Chong Peng Choon, the fourth defendant, and he has since attained the age of 21. The plaintiffs and Chong Peng Leong, the third defendant, are the sons of Chong Toh Hui.

The defendants have executed three separate documents in respect of the trust premises and they have been registered at the Registry of Deeds:

(a) A deed of assent dated 15 December 1982 made between the first and second defendants as executors and Chong Peng Leong, Chong Peng Choon, Chong Peng Tiong as beneficiaries whereby the executors assented to the vesting of the trust premises in the said beneficiaries for an estate in fee simple as joint tenants and as absolute and beneficial owners thereof.

(b) A deed of severance dated 15 December 1982, made by Chong Peng Leong, Chong Peng Choon and Chong Peng Tiong whereby they severed their joint tenancy of the trust premises and purported to hold the trust premises as beneficial tenants in common in equal shares.

(c) A deed of gift dated 15 December 1982, whereby Chong Peng Tiong assigned his rights in the trust premises to the first defendant, his father.

The plaintiffs' contention is that cl 6(c) gives to Chong Peng Leong and Chong Peng Choon, the third and fourth defendants, and to Chong Peng Tiong a contingent interest in the trust premises which terminates on Chong Peng Leong predeceasing Chong Peng Choon and Chong Peng Tiong and that the plaintiffs take a remainder in the trust premises subject to the interest of Chong Peng Leong, Chong Peng Choon and Chong Peng Tiong.

The contention of the first, third and fourth defendants is that the testator by cl 6(c) had devised the trust premises to Chong Peng Leong, Chong Peng Choon and Chong Peng Tiong as joint tenants of the trust premises.

The object of the court in construing a will is to ascertain the intention of the testator as expressed in his will when it is read as a whole in the light of the surrounding circumstances in which it was made (*Theobald on Wills* (14th Ed) p 185).

Reading cl 6(c) in the ordinary and literal sense, it amounts to a gift of the trust premises to Chong Peng Leong, Chong Peng Choon and Chong Peng Tiong as joint tenants subject to the condition that if Chong Peng Leong predeceased the 'others', the property is to be given to the plaintiffs as joint tenants. There is also an express direction for the gift to vest within 12 months of the testator's death.

The express direction to vest the trust premises in Chong Peng Leong, Chong Peng Choon and Chong Peng Tiong gave them a vested interest in the trust premises. The interest that Chong Peng Leong, Chong Peng Choon and Chong Peng Tiong then took was an interest in remainder as it was then subject to prior enjoyment to the same by Chong Che Cheng & Co Ltd and the testator's widow.

When the respective interests given to the said company and the testator's widow came to an end, the vested interests of Chong Peng Leong, Chong Peng Choon and Chong Peng Tiong gave them the right to immediate possession and enjoyment of the trust premises. As between them and the plaintiffs, the interests given to them respectively under cl 6(c) are that Chong Peng Leong, Chong Peng Choon and Chong Peng Tiong are joint tenants. In the event of Chong Peng Leong predeceasing 'the others', the interest in the trust premises is to be given over to the plaintiffs. The testator has clearly prescribed this contingency as the event giving effect to the gift over of the trust premises to the plaintiffs. However, the testator has not expressly provided or stipulated the time or period as to when the contingency is to occur in order to determine if the gift over is to take effect or to be defeated.

The testator expressly directed his trustees 'within 12 months from my date of death to convey back transfer or vest the said trust premises to my grandsons...'. This clearly indicates that the testator intended to restrict the period within which the contingency of the death of Chong Peng Leong is to occur to within 12 months of his death. It is not right that one should wait indefinitely to see if the gift to the plaintiffs would materialize the vest.

The intention of the testator can be gathered from the Chinese document which he executed on the same day as the said will (exh CPL6A, exhibited to the affidavit of Chong Peng Leong filed on 16 May 1987) wherein he expressed his thoughts thus:

> Wills generally have to comply with the law, and to comply with the law is very troublesome. There is a necessity for this codicil because of item 6(c) of the will (which reads): 'Within 12 months of my death, my trustees shall transfer this property to my grandsons Chong Peng Leong, Chong Peng Tiong and Chong Peng Choon'. My original intention was only Chong Peng Leong alone. The reason of bringing in Chong Peng Tiong and Chong Peng Choon is to prevent Chong Peng Leong from selling it alone and by himself. If it is sold, then it has to be shared by three persons, and if it is not sold, then it shall forever be the common residence of Chong Peng Leong and brothers Peng Han, Peng Keat and Peng Hong. The father/fathers of Peng Tiong, Peng Choon has/have his/their own house/houses (and Peng Tiong and Peng Choon) should not dispute over the right to live in it. As regards transferring (of the property) within 12 months, it does not matter to delay executing it for a considerable time.

The intention of the testator was to benefit Chong Peng Leong, Chong Peng Choon and Chong Peng Tiong. They were given the unconditional and absolute right to sell the trust premises and share the proceeds. As long as the trust premises is not sold, Chong Peng Leong and the plaintiffs have the right to live in it. It is clear that the testator did not intend that the plaintiffs should have the trust premises. The only interest he had in mind was the interest of Chong Peng Leong and for reasons best known to the testator he decided that it might not be in the interest of Chong Peng Leong, who was then an infant, to transfer the trust premises to him alone and therefore brought in Chong Peng Choon and Chong Peng Tiong.

In my view, in the circumstances of this case, since Chong Peng Leong survived the period of 12 months after the testator's death, the contingency upon which the gift over to the plaintiffs is to take effect can no longer operate. The gift to Chong Peng Leong, Chong Peng Choon and Chong Peng Tiong therefore becomes indefeasible and absolute and the gift over to the plaintiffs defeated. The result is that Chong Toh Jin (the first defendant), Chong Peng Leong and Chong Peng Choon are now absolute owners of the trust premises. I will now hear the parties on costs.

Order accordingly.

Solicitors: *G Raman & Partners; Chelliah & Co; Tan Rajah & Cheah.*

Reported by *Terence Tan Bian Chye*